REMARKS

I. Status of the Claims

With entry of the amendments herein, claims 13, 15-22, 37, 39-46, 49, and 51 - 61 are pending in this application. Independent claims 13, 37, and 49 are amended herein to incorporate the phrase "wherein the weight ratio of EPA:DHA in the fatty acid composition is 1:X, where X is greater than 1." Independent claim 53 is amended to incorporate the phrase "and the concentration of DHA is greater than the concentration of EPA." Dependent claims 15, 41, 56, and 59 are amended to reflect the amendment in the independent claims. Support for those amendments can be found throughout the specification and in now cancelled claims 14, 38, and 50. Accordingly, no new matter is added by the amendments herein.

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Office, placing claims 13, 15-22, 37, 39-46, 49, and 51 - 61 in condition for allowance. Applicants submit that the proposed amendments to claims do not raise new issues or necessitate the undertaking of any additional search of the art by the Office, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Office.

Applicants submit that the entry of the amendment would place the application in better form for appeal, should the Office dispute the patentability of the pending claims.

II. Rejection Under 35 U.S.C. § 103

The Office maintains the rejection of claims 13, 15-22, 37, 39-46, 49, and 51-61 under 35 U.S.C. § 103(a), as allegedly unpatentable over U.S. Patent No. 5,502,077 to Breivik et al. ("Breivik") in view of U.S. Patent Application Publication No. 2005/0019372 to Corkey et al. ("Corkey"). Office Action at page 5. Applicants continue to respectfully disagree and traverse this rejection for the reasons of record and the following reasons below.

In response to Applicants' arguments and amendments filed on December 22, 2009, the Office explains that "DHA *richness* connotes a concentration in the broadest reasonable interpretation of a 1:1 ratio said to contain DHA." *Id.* at page 2 (emphasis original). The Office further asserts that optimization of ratio strengths of said components is within the purview of one of ordinary skill. *Id.* at page 3. However, the Office's response to Applicants' arguments, as in prior Office Actions, fails to appreciate the teachings of the cited references themselves, i.e., "as a whole."

For example, Breivik teaches a composition comprising a ratio of EPA/DHA where the amount of DHA is equal to or less than EPA. Breivik at col. 3, ll. 8-9. The only instance where Breivik provides for "DHA richness" is at col. 3, ll. 61-65. Breivik particularly states that "[t]he upgrading of the EPA fraction to obtain a weight ratio of EPA:DHA of from 1:1 to 2:1, especially 3:2 or the upgrading of the DHA fraction to obtain a EPA:DHA weight ratio of from 1:1 to 1:2 may be achieved in the molecular distillation stage." *Id.* at col. 3, ll. 61-65.

However, that disclosure is within the context of the method, in particular, the purification - distillation stage related to a crude composition. Moreover, Breivik does

not link the "EPA:DHA ratio of from 1:1 to 1:2" to any of the benefits taught or suggested. Thus, one of skill in the art would not look at the method in Breivik and think that Breivik is advocating using a DHA rich composition or a crude composition that has not been purified to arrive at the present invention.

In fact, this is further demonstrated by Table 3 which shows "the main fatty acid contents of several compositions according to the present application [of Breivik]." *Id.* at col. 5, ll. 57-58. Table 3 lists six compositions which all comprise a ratio of EPA/DHA, where the amount of **DHA is equal or less than EPA**. Breivik at Table 3. In contrast, the pending claims recite "the weight ratio of EPA:DHA in the fatty acid composition is 1:X, where X is greater than 1."

Additionally, Breivik does not recognize a DHA rich ratio as a results effective variable parameter for optimization. M.P.E.P. § 2144.05(II)(B) (explaining that "[a] particular parameter must be first recognized as a result effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation."). Instead, the process in Breivik is directed towards creating an EPA rich ratio. Breivik at col. 3, ll. 60-65. Breivik then uses the purified EPA rich compositions in Table 3 which only has ratios of EPA:DHA of 1:1 and higher for the EPA fraction. *Id.* at col. 6, ll. 1-15. One skilled in the art would see that Breivik optimizes the amount of EPA and would not consider optimizing the ratio to increase the amount of DHA based on Breivik. Since the DHA rich composition is considered the crude composition that needs purification, one of skill in the art would be directed by Breivik to further "purify" the composition

away from the crude composition. This would lead one of skill in the art away from the pending claims.

As explained above, Breivik uses ratios of EPA/DHA with an amount of DHA equal or less than the amount of EPA. *Id.* When Breivik describes the claimed invention which includes this ratio, the specification states, "[a]lthough the detailed biological mechanisms for the effects of the compositions according to the present application are not explicitly known, there are indications of a surprising synergism between the action of EPA and of DHA." *Id.* at col. 2, ll. 63-67 (emphasis added). Thus, to optimize the "surprising synergism," a person of ordinary skill in the art would modify Breivik's ratio that is an amount of **DHA equal or less than the amount of EPA**, not the other way around.

In the Office Action, the Office admits that Breivik "does not go into specific detail as to risks of cardiovascular disease in view of the specific treatment thereof." Office Action at page 6. To cure those deficiencies, the Office uses Corkey. However, the Office again fails to appreciate Corkey's teachings "as a whole" and instead, disregards relevant teachings distorting the teachings of this reference.

Namely, Corkey teaches dietary products comprising a combination of milkfat-derived medium-chain triglycerides (MCT) and long-chain triglycerides (LCT), and "a small portion" of omega-3 fatty acids. Corkey at [0006], [0121]. Corkey does not recite the claimed ratio or even a ratio of EPA/DHA at all. Thus, Corkey is not directed towards medium chain fatty acids and omega polyunsaturated fatty acids, but instead to a composition of MCT and LCT.

By not appreciating the teachings of the cited references "as a whole," Applicants submit that Breivik and Corkey, alone or in combination, fail to teach or suggest each and every element of the claimed invention. Also, Applicants submit that Breivik and Corkey, alone or in combination, would fail to motivate one skilled in the art to modify the composition to arrive at the claimed inventions. This results in the lack of a *prima facie* case of obviousness. Applicants respectfully request the withdrawal of the rejection.

III. Conclusion

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is not rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By: _____
Adriana L. Burgy
Reg. No. 48,564